

# Cross-border provision of services

Art 56 TFEU (ex- 49 EC) within the context of the provisions on Establishment

# Article 56 1st paragraph

*Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be prohibited in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.*

# Article 56 2nd paragraph

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.

# Direct effect of Article 56

◆ *Van Binsbergen* 33/74

# Meaning of services-Article 57 TFEU (ex-56 EC)

Services shall be considered to be "services" within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

# Relevant case law

◆ *Rush Portuguesa* C-113/98

◆ *Schindler* C-275/92

◆ *Alpine Investments* C-384/93

# Examples

"Services" shall in particular include:

- ◆ (a) activities of an industrial character;
- ◆ (b) activities of a commercial character;
- ◆ (c) activities of craftsmen;
- ◆ (d) activities of the professions.

# Matters decided by ECJ

- ◆ Remuneration need not come from the recipient
- ◆ Service provided must have a profit motive
- ◆ Medical services
- ◆ Education services
- ◆ Financial services

# Medical services

- ◆ *Luisi & Carbonne* 286/82 & 26/83
- ◆ *SPUC v Grogan* C-159/90
- ◆ *Geraets-Smits & Peerbooms* C-157/99
- ◆ *Vanbrackel v ANMC* C-368/98
- ◆ *IKA v Vasileios Ioannides* C-326/00

# Article 57 3rd paragraph

Without prejudice to the provisions of the chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

# Exclusions & reservations – Article 58 (ex-51 EC)

- ◆ Transport services - excluded
- ◆ Banking services – free movement of capital

# Article 59 TFEU (ex-52 EC) – legislative competence

In order to achieve the liberalisation of a specific service, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, issue directives acting by a qualified majority. **NB Directive 2006/13 “The Services Directive”**

# Article 61 TFEU (ex-54 EC) MS obligation

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 56 TFEU (ex-49 EC).

# Article 62 TFEU (ex-55 EC)

The provisions of Articles 51 to 54 TFEU (ex.-45 to 48 EC) shall apply to the matters covered by this chapter.

# Exceptions to the freedoms

- ◆ Art 45(3) TFEU (ex-39(3)EC) + Art 51 (ex-45 EC) + Art 62 TFEU (ex-55 EC)
- ◆ 2nd legislation
  - No limitations for economic reasons
  - Only invoked on basis of personal conduct
- ◆ Public service proviso – Art 45(4) TFEU (ex-39(4)EC)